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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,550	03/09/2004	Tom F. Doris	30320/17863	1997
4743 7590 02/20/2007 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			EXAMINER KINDRED, ALFORD W	
			ART UNIT 2163	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		02/20/2007	PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/796,550	DORIS, TOM F.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alford W. Kindred	2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 24 November 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/24/06
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is responsive to communication: Reconsideration, filed on 11/24/06.

This action is made final.

***Allowable Subject Matter***

2. Claims 4-7, 12-17, 19-25, and 27-30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
3. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach and/or suggest "generating a first configuration for allocating resources having a first degree . . . a second configuration for allocating configuration . . . rejecting the second configuration if the first degree . . . accepting the second configuration if the first degree of optimization represents a more optimal configuration than the second degree . . .", combined with "generating a third configuration for allocating resources . . . a fourth configuration for allocating resources based on a variation of the first configuration . . . will comprise the minimum configuration threshold."

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-2, 8-10, 18, and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Hahn et al., US# 20050198102.

As per claims 1 and 10, Hahn et al. teaches “generating a first configuration for allocating resources having a first degree of optimization; generating a second configuration for allocating resources based on a variation of the first configuration, the second resource allocation configuration having a second degree of optimization; rejecting the second configuration if the first degree of optimization represents a more optimal configuration than the second degree of optimization based on a first probability that the first configuration comprises a global optimum configuration for allocating resources” (see paragraph [0066], [0081]-[0082]) “accepting the second configuration if the first degree of optimization represents a more optimal configuration than the second degree of optimization based on a second probability that the first configuration does not comprise the global optimum configuration for allocating resources” (see paragraph [0067], [0071] and [0078]).

As per claim 2, Hahn et al. teaches “accepting the second configuration if the second degree of optimization represents a more optimal configuration than the first degree of optimization” (see paragraph [0067] and [0074]).

As per claim 3, Hahn et al. teaches “. The method of claim 1 further comprising:

comparing the second degree of optimization to a degree of optimization according to the most optimal configuration among previously generated configurations; rejecting the second degree of optimization if the degree of optimization according to the most optimal configuration represents a more optimal configuration than the second degree of optimization; and accepting the second degree of optimization if the second degree of optimization represents a more optimal configuration than the degree of optimization according to the most optimal configuration.

As per claims 8-9, Hahn et al. teaches “sampling one of a plurality of configurations for allocating resources, the plurality of configurations each comprising a variation of the first configuration” (see paragraph [0071] and [0073]).

As per claim 10, Hahn et al. teaches “modifying the first resource allocation configuration according to a genetic operator” (see paragraph [0047] and [0069]).

As per claim 11, Hahn et al. teaches “determining a value characterizing the utilization of resources according to a configuration for allocating resources . . . the first degree of optimization . . . second degree of optimization” (see paragraph [0041], [0047], [0051], and [0068]).

As per claims 18, this claim is rejected on grounds corresponding to the arguments given above for rejected claim 1-2 and is similarly rejected.

As per claim 26, this claim is rejected on grounds corresponding to the arguments given above for rejected claims 1-2 and is similarly rejected.

***Response to Arguments***

6. Applicant's arguments filed 11/24/06 have been fully considered but they are not persuasive.

--As per applicant's arguments regarding "Hahn et al. . . . is not prior art with respect to the present application, because the U.S. filing date of Hahn et al. '102 is May 17, 2004 . . . '102 relied upon in the official action are not entitled to the earlier U.S. filing date of Han et al. '262" . . . examiner maintains that Hahn et al. '102 is proper prior art and the cited paragraphs are taught in the parent application of '102. The teachings of the parent publication contains the general teachings of the cited paragraphs and therefore the '102 prior art is proper.

As per applicant's arguments regarding " '262 parent application only contains 64 numbered paragraphs, none of which appear to correspond to paragraphs [0066], [0067] . . . ", examiner disagrees and maintains that the teachings, in general, of '262 includes basic disclosure of the cited paragraphs in the instant application and therefore the '102 child application is proper prior art.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alford W. Kindred whose telephone number is 571-272-4037. The examiner can normally be reached on Mon-Fri 9:00 am- 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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